

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0407 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIODS: 1994

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ISSUES

1. Adjusted Gross Income Tax: Employee Expense Reimbursements

Authority: IC 6-3-2-1, 26 U.S.C.A. Sec. 62, IC 6-8.1-5-1(b), 45 IAC 3.1-1-4.

Taxpayer protests the disallowance of the deduction of employee expense reimbursements from their adjusted gross income tax.

2. Tax Administration: Interest and Penalty

Authority: IC 6-8.1-1-10-1(a), IC 6-8.1-10-2.1(A).

Taxpayer protests the imposition of the negligence penalty and interest on their tax assessment.

Statement of Facts

Taxpayers are a married couple that pays their Indiana adjusted gross income tax jointly. In 1994 Taxpayers filed amended federal and state tax returns to reflect alleged employee expense reimbursements. On the amended federal return, Taxpayers claimed the alleged employee expense reimbursements as

deductible “employee business expenses” on their federal Schedule A. On their amended state return, Taxpayers deducted the alleged employee expense reimbursements from their Indiana adjusted gross income. Further facts will be provided as necessary.

1. Adjusted Gross Income Tax: Employee Expense Reimbursements

Discussion

Adjusted gross income tax is imposed on individuals in Indiana. IC 6-3-2-1. Taxpayers are to report and pay on their adjusted gross income as it is defined in 26 U.S.C.A. 62 with certain statutory modifications. IC 6-3-1-3.5. All assessments by the Indiana Department of Revenue are presumed to be correct and Taxpayer has the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

Taxpayers submitted a listing of the alleged employee expense reimbursements totaling \$12,874.00, a copy of the amended 1994 federal return showing an itemized deduction for employee business expenses in the same amount, a copy of the amended 1994 state tax return and the 1994 W-2 forms. Taxpayer contended that the employer should have revised the W-2 form to reflect the employee expense reimbursements. Taxpayers’ listing of the expenses does not prove that the employer actually paid these amounts to Taxpayer directly on a dollar for dollar amount as a true reimbursement of expenses. Further the submitted W-2 indicates that the employer withheld social security tax on the entire amount of the reported wages. Social security tax is not withheld on expense reimbursements. Taxpayer did not sustain his burden of proof that the subject \$12,874.00 was actually employee expense reimbursements.

Even if Taxpayers had been able to prove that the subject monies were employee expense reimbursements, Taxpayers did not reflect them properly on the Indiana return. Pursuant to the Indiana law, Taxpayer was required to submit his federal adjusted gross income on the Indiana return. Instead of reporting the federal adjusted gross income, Taxpayer reported the adjusted gross income minus the alleged employee business expenses. For federal purposes, Taxpayer took the employee business expenses on Schedule A for itemized deductions. This schedule modifies the federal adjusted gross income after the requirement that the federal adjusted gross income be transferred to the Indiana tax return. Indiana does not provide a comparable modification to the adjusted gross income figure. There is also no provision in the law allowing Taxpayers to deduct reimbursed employee expenses directly from the federal adjusted gross income for Indiana tax purposes. Further, at 45 IAC 3.1-1-4, the Indiana Administrative Code specifically disallows any deduction from the Indiana adjusted gross income for federally allowed “itemized deductions.”

Finding

Taxpayer's protest is denied.

2. Tax Administration: Interest and Penalty

Interest was imposed pursuant IC 6-8.1-10-1(a), which states as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

There is no provision in the law granting the Indiana Department of Revenue authority to waive the interest. Therefore the interest cannot be waived.

The negligence penalty was imposed pursuant to IC 6-8.1-10-2.1(a) which states as follows:

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence, . . . the person is subject to a penalty.

Taxpayers have a duty to read and follow the directions provided with the Indiana adjusted gross income tax returns. The actual form and accompanying directions clearly state that Taxpayers are to report their federal adjusted gross income on line 1. By reporting only a portion of their federal adjusted gross income on line 1 of the Indiana return, Taxpayer clearly breached that duty.

Finding

Taxpayer's protest to the imposition of interest and the negligence penalty is denied.